In the Supreme Court of the United States

OCTOBER TERM, 1925

No. 91

UNITED STATES, APPELLANT

v.

ST. LOUIS, SAN FRANCISCO & TEXAS RAILWAY COMPANY

No. 92

UNITED STATES, APPELLANT

v.

WABASH RAILWAY COMPANY

APPEALS FROM THE COURT OF CLAIMS

REPLY BRIEF FOR THE UNITED STATES

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Opposing counsel argue that paragraph (3) of Section 16 does not apply at all to claims presented to the Court of Claims (Br. 4), as "A claim presented to the Court of Claims is not 'an action at law'" (Br. 8).

The argument appears to be that the Court of Claims is not a tribunal in which justiciable issues are heard and determined. It should be noted that the learned counsel make no reference whatever to actions in the District Courts when the jurisdictional amount is present. We are not informed as to whether they consider the District Courts are in the same category as that in which they seek to place the Court of Claims.

As *amici curiae,* counsel for the Southern Pacific and other railroad companies have filed a brief in which they argue that the three-year limitation prescribed by the Transportation Act of 1920 should be construed as eliminating the Government as a shipper from its provisions entirely; for, they say, the statute applies " only to suits of that character in the ordinary courts of law against private shippers, and does not apply to claims filed by such carriers in the Court of Claims on account of transportation services rendered the United States " (Br. 5).

In *United States* v. *Klein,* 13 Wall. 128, 144, 145, Mr. Chief Justice Chase said: " Since then the Court of Claims has exercised all the functions of a court, and this court has taken full jurisdiction on appeal. The Court of Claims is thus constituted one of those inferior courts which Congress authorizes and has jurisdiction of contracts between the Government and the citizen, from which appeal regularly lies to this court."

In *Great Falls Manufacturing Co.* v. *Attorney General,* 124 U. S. 581, 598, it was argued that the Court of Claims is a court unknown to the Constistitution, being neither a court of equity such as was known at the adoption of that instrument nor a court of law proceeding according to the rules of the common law, but only a board of referees, constituted by one party to hear such cases as another party will consent to submit to its determination, and without power to enforce its judgment against the party by whom it is created; and that it directs property to be taken and the owner thereof dispossessed without making provision for just compensation. In holding against the argument thus made, Mr. Justice Harlan, speaking for this Court, said:

"Congress prescribed a particular mode for ascertaining the compensation which claimants of property taken for the purposes indicated in the Act of 1882 were entitled to receive. It gave them liberty to proceed by suit against the United States before a designated tribunal, which, since the passage of the act of March 17, 1866, 14 Stat. 9, has exercised 'all the functions of a court,' from whose judgment appeals regularly lie to this court. *United States* v. *Klein,* 13 Wall. 128, 145; *United States* v. *Jones,* 119 U. S. 477; *Gordon* v. *United States,* 117 U. S. 697."

The action was brought to recover charges for transportation. The words "actions at law" are all-embracing; and if the statute is binding in fixing the *jurisdiction* of all courts throughout the

United States, both Federal and State, there is no sound reason for reading into the statute the words "except actions against the United States."

In many of the States which have adopted codes the common law and chancery jurisdictions have been abolished and all actions are commenced by the filing of a complaint or petition substantially in the form prescribed for the Court of Claims. It would not seriously be contended that because in such States the technical forms of actions at law and suits in chancery have been abolished the Transportation Act of 1920 would not apply but that the separate statutes of limitations of the respective States still remain in force.

Congress deliberately adopted the words "all actions at law" for the purpose of reaching every action which may be brought in any court for the purpose of collecting the charge. The mere fact that the Government consented to be sued in such a manner does not exclude it from the statute.

In *McAndrews* v. *Chicago, etc., Railway Co.*, 162 Fed. Rep. 856, 858, Circuit Judge Grosscup (Circuit Judges Baker and Seaman concurring) said: "An 'action' is the means that the law has provided to put the cause of action into effect."

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Opposing counsel argues (Br. 3) "even if such limitation does apply to such claims, it has no bearing on this case, which is founded upon an *appropriation* of so much of plaintiff's money, which

appropriation can be defended only upon the basis of its propriety," and "In their brief filed in this case Government counsel seem to have overlooked it altogether." Again he says (Br. 14), "We consider it conclusive of the case, regardless of the application of the 3-years limitations." On page 15 counsel again refers to "a suit for the money erroneously *appropriated*" (italics ours).

The Court of Claims said (R. 10):

> At any rate the deductions were made within six years prior to the beginning of this suit. Plainly the plaintiff's cause of action did not arise until deductions were made from its subsequent bills. Its prior bills had been paid in full. Properly speaking, its right of action is based upon or because of these deductions, and this is not barred by the statute of six years, the suit having been duly instituted within that time.

Wabash Railway alleged (R. 5) that "The reasons assigned for the original deduction and for the subsequent disallowance of petitioner's supplemental bill were violative both of the lawful method of constructing through fares and of the terms of said military agreements." This would indicate the carrier was seeking to establish a contract between it and the War Department for the carriage of the military impedimenta at the regularly published tariff rates less certain agreed deductions.

If, as opposing counsel now seems to argue, the action of Wabash Railway is not based on the

agreement and tariffs, but is an action "which is founded upon an *appropriation* of so much of plaintiff's money, which *appropriation* can be defended only upon the basis of its propriety" (italics ours) (Br. 3), then there is no contract.

Opposing counsel further argues (Br. 11), "There can be no doubt that this suit, whether based upon an unpaid part of a transportation claim, *or upon the promise implied by the Constitution and the law of the land* to make plaintiff whole if the withholding of its money in the course of payment of the later bill be erroneous, is a suit based upon a contract" (italics ours). If this is an action to recover tariff charges for transportation, it is barred by paragraph (3) of Section 16; if it is an action to recover on "the promise implied by the Constitution and the law of the land to make plaintiff whole," there is no contract, the Court of Claims was without jurisdiction, and its judgment is void. *Pearson* v. *United States,* 267 U. S. 423; *Klebe* v. *United States,* 263 U. S. 188, 191.

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NOVEMBER, 1925.

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THE UNITED STATES, *Appellant*,

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WABASH RAILWAY COMPANY.

Appeals from the United States Court of Claims.

BRIEF UPON THE APPLICATION OF THE THREE-YEAR LIMITATION IN THE INTERSTATE COMMERCE ACT, WITH RESPECT TO THE INSTITUTION OF ACTIONS AT LAW BY CARRIERS FOR THE RECOVERY OF THEIR CHARGES, TO CLAIMS OF RAILROAD COMPANIES AGAINST THE UNITED STATES IN THE COURT OF CLAIMS GROWING OUT OF THEIR CHARGES FOR GOVERNMENT TRANSPORTATION.

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